Supreme Court, U.S.
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No. 94-___

In The

Supreme Court of the United States

October Term, 1994

BENNIE F. L. WARD,

Petitioner,

vs.

THE UNIVERSITY OF TENNESSEE, ET AL.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Does the Sixth Circuit's failure to find material issues of fact merit a reversal of summary judgment and a remand to the District Court for a trial of this Title VII racial discrimination action?

2. Is the plaintiff in a Title VII racial discrimination claim required to present direct evidence that an employer's actions are pretextual, or are logical inferences sufficient?

PARTIES TO THE PROCEEDINGS BELOW

The following is a list of the parties to the proceeding in the United States District Court for the Eastern District of Tennessee and the United States Sixth Circuit Court of Appeals.

1. Bennie F. L. Ward
2. The University of Tennessee, Knoxville, Tennessee
3. John Quinn, Chancellor of the University of Tennessee
4. Larry Ratner, Dean of the College of Liberal Arts at the University of Tennessee
5. William Bugg, Head of the Physics Department within the College of Liberal Arts at the University of Tennessee

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STATEMENT OF REPORTS OF OPINIONS

Neither the District Court's Memorandum Opinion granting summary judgment to the defendant University of Tennessee and its administrative officers, nor the Per Curiam Opinion of the United States Sixth Circuit Court of Appeals are published.

However, the Appendix contains both the District Court's Memorandum Opinion, A-6, and the Per Curiam Opinion, A-1, of the United States Court of Appeals for the Sixth Circuit.

STATEMENT OF JURIDSICTION

By the Per Curiam Opinion of the United States Court of Appeals for the Sixth Circuit, the District Court's granting of the defendant University's Motion for Summary Judgment was sustained on November 1, 1994. Plaintiff, Bennie Ward, invokes this Court's jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS RELEVANT TO THIS PETITION

. . . It shall be an unlawful employment practice for an employer -

1. To fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his

compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin, or

2. To limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

42 U.S.C. § 2000e-2(a).

Federal Rule of Civil Procedure 56, Summary Judgment.

STATEMENT OF THE CASE

Bennie F. L. Ward (hereinafter "plaintiff Ward") filed this action in the United States District Court for the Eastern District of Tennessee on July 20, 1992, alleging salary discrimination on the basis of race in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000(e), et seq. (1988), and the Tennessee Human Rights Act, T.C.A. § 4-21-101, et seq., (1991, supp. 1993). Plaintiff is a black physics faculty member and the lawsuit is against his employer, the University of Tennessee (hereinafter "the defendant University"), and certain of its administrative officers. The basis of plaintiff Ward's claim is that he is being paid less than other similarly situated white faculty members.

Plaintiff Ward was hired by defendant University in 1985 at the rank of assistant professor as an elementary

particle theory physicist, received tenure in 1989, and obtained the faculty rank of full professor in 1990. A-20; A-23-24. Plaintiff Ward's prodigious efforts soon brought him a great deal of external funding. By 1992 he was receiving almost $200,000.00 a year and had five people working for him, all paid for by monies coming from grants/awards/contracts other than from the defendant University. A-45; A-52. All this outside funding enabled him to publish a great deal and travel, giving lectures on his work. Despite these obvious benefits to his employer, plaintiff Ward was being paid in 1992 only $3,000.00 more than a beginning white assistant professor. A-52.

Shortly after plaintiff Ward was recruited in 1985 at the salary of $32,000.00, the defendant University brought in as a "Distinguished Scientist", a similarly situated elementary particle theory physicist, Francis E. Close, at a salary in excess of $100,000.00.[1] Despite the status laid upon Dr. Close as a "Distinguished Scientist", plaintiff Ward received greater external funding than did Dr. Close during the three years he held the position. A-43; A-45-46. In fact, during 1985, the first funding year, the defendant University doled out some of plaintiff Ward's external funding money to "Distinguished Scientist" Close ($18,000.00 out of $40,000.00). A-39-41.

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[1] The Distinguished Scientist program is a joint venture of the defendant University of Tennessee and Martin Marietta Energy Systems, Inc., on behalf of the United States Department of Energy facility at Oak Ridge National Laboratory.

Salaries for faculty members at the defendant University, because it is a major research institution, are determined largely by the faculty member's research, publications and international recognition, with teaching ability receiving less emphasis. A-37-38. Despite these yardsticks to measure the monetary value of a faculty member, salary decisions remain subjective. A-27. A review of the public records at the defendant University of faculty members' salary in the physics department reveals that plaintiff Ward's salary compared to his white colleagues is extremely out of line.

Throughout academia, there are measures used extensively to measure faculty members' performance for salary decision-making. These measures include a review of a faculty member's number and quality of publications, a review of the faculty member's ability to obtain external funding for research, and a review of the number of times a faculty member is invited to give guest lectures outside the University. A-20; A-37-38. A comparison of Ward's salary with other white faculty members' salaries in these areas (number and quality of publications, amount of external funding and number of invitations as a guest lecturer) reveals that plaintiff Ward is not being compensated fairly. A-36; A-47-50; A-58. For example, a comparison of plaintiff Ward's salary per publication, salary per recent publication, and salary per invited talks was exceedingly less than eight of his fellow, but white, faculty members. A-58.

Despite this lack of monetary reward, plaintiff's department chair and supervisor, William Bugg, has described plaintiff's work as "exemplary" and that he has

"maintained an exceedingly strong research program . . . ". A-29. Dr. Bugg also stated that Ward was "highly regarded by outstanding physicists at the finest institutions all over the country." A-30. Plaintiff Ward asserts he is a world-renowned physicist and deserves to be compensated accordingly. A-56.

In response to this evidence, defendants relied upon the self-serving affidavit of one of the individual defendant administrative officers, the chair of the physics department, William M. Bugg. Through his Affidavit, defendant Bugg cited his own comparisons, data, and statistics to counter those of the plaintiff.

Nonetheless the trial court issued an order sustaining the defendant University's Motion for Summary Judgment on August 11, 1993. On appeal to the United States Court of Appeals for the Sixth Circuit, plaintiff Ward lost again. The Sixth Circuit issued a Per Curiam Opinion which ultimately held:

> "Ward simply has not provided evidence to state a *prima facie* claim of racial discrimination, nor has he produced evidence to rebut the University's explanations for its salary decisions." A-5.

Plaintiff Ward seeks this Court's review by certiorari pursuant to 28 U.S.C. § 1254.

REASONS FOR GRANTING THE WRIT

Professor Ward seeks the exercise of this Court's power of supervision to correct a grave misjustice to

himself and other black faculty Title VII plaintiffs. The Sixth Circuit, in sanctioning the Order of the District Court departed from the accepted and usual course of judicial proceedings. Plaintiff Ward acknowledges that this Court does not normally grant certiorari on summary judgment issues, but points out that there is precedent. See e.g., *O'Connor v. Ortega*, 480 U.S. 709, 94 L.Ed.2d 714, 107 S.Ct 1492 (1987); *Mitchell v. Forsythe*, 472 U.S. 511, 105 S.Ct 1806, 86 L.Ed.2d 411 (1985). Professor Ward submits that his case of racial discrimination is too important to be halted before a jury can hear the facts and make a determination.

ARGUMENT

I. THE SIXTH CIRCUIT FAILED TO TAKE COGNIZANCE OF THE ISSUES OF FACT THAT MADE OUT A PRIMA FACIE CASE OF DISCRIMINATION.

The Sixth Circuit, as did the district court, concluded too hastily that the case did not present issues of material fact which would necessitate a trial. This result can only be attributed to the skillful presentation of the University's position. The author of the Sixth Circuit Opinion was so swayed that he labeled plaintiff Ward's facts and figures as "opinion" and the defendant University's facts and figures as "evidence". A closer look reveals a prima facie case and genuine issues for decision by a jury, not the trial judge on a Rule 56, F.R.C.P. summary judgment motion. Important to a consideration of the instant issue is the established law that in Title VII actions, where the

defendant's intent and state of mind are placed in issue, summary judgment is not ordinarily appropriate. See, e.g. *Rosen v. Thornburgh*, 928 F.2d 528 (2nd Cir. 1991), *Hudson v. Southern Ductile Casting Corp.*, 849 F.2d 1372, rehearing denied 859 F.2d 928 (11th Cir. 1988).

Plaintiff Ward's claim against the defendant University is that he is being paid less than he is worth vis-a-vis white faculty members and that the reason for this inequity is the color of his skin. He bases his position on the assertion that salaries are a factor of the number and quality of publications a faculty member produces, the amount of external funding he obtains and the number of guest lectures which he is invited to make. A-47-50; A-61. Using any of these standards, plaintiff's abysmally low salary makes out a prima facie case.

Defendant University established its position and laid out its case through the Affidavit of the physics department chair, William M. Bugg. Dr. Bugg serves as Chair of the Physics Department at the defendant University and is also a named defendant. As such, his Affidavit testimony should not have been accorded the conclusive weight it received by the District Court and the Sixth Circuit. Rather, its content should have been carefully scrutinized and received with the caution any self-serving declaration deserves.

For example, nowhere in Dr. Bugg's affidavit is there testimony revealing a clear picture of plaintiff Ward's salary vis-a-vis the other white faculty members' salaries. In one place the affidavit lists salaries for the entire physics department for only one year, 1986. A-19. The school year 1985-1986 was plaintiff Ward's first year at

the defendant University. Conspicuously absent were salary comparisons for all the other years sought to be addressed by plaintiff's lawsuit. In another place the Bugg Affidavit lists average salary increments vs. plaintiff Ward's salary increments. A-21. This is a clever comparison as averages tend to mask important distinctions and more importantly, cover up acts of discrimination.

Another comparison in the Bugg affidavit is the number of times *one* faculty member's publications were cited by other publications in comparison to plaintiff Ward's citations. A-22. Plaintiff Ward took issue with these comparisons, and the methodology used, explaining that the particular citation authority left out significant journals to which he (plaintiff Ward) was a regular contributor. A-32; A-58; A-61-62. Just as important to a consideration of this issue is the effect on publication rates the distinction between being a theorist in physics vs. being an experimentalist in physics.

Plaintiff Ward is a theorist and the defendant University did not face the issue at all. Plaintiff Ward, on the other hand, pointed out that because experimentalists work in larger groups than do theorists, they necessarily produce more published articles than theorists. A-32, 33. Nonetheless, the courts below appeared to accept the Bugg affidavit testimony as conclusive. Whether the affidavit's comparisons were justified should have been left to a jury's decision.

Another table in the Bugg affidavit compared plaintiff Ward's salary to a *few* other white faculty members' average salaries vis-a-vis their external funding dollars and referred publications. A-26. Missed by the courts

below was the glaring omissions of all, not just some, of the white faculty members to which Ward was compared and the obscuring averages. Plaintiff Ward offered salary comparisons as well. For example, plaintiff Ward demonstrated through his evidence that among his white, similarly situated, colleagues, he was being paid less per recent (1985-1989) publication, and less per invitation as a guest lecturer. A-59. These comparisons at least raise a material issue of fact as whether plaintiff Ward's low salary is the product of racial discrimination.

Plaintiff Ward did make out a *prima facie* case. There are issues of material fact to be resolved, and this Court should remand this case so that a jury can resolve them.

II. A REVERSAL IS MANDATED BY THE SIXTH CIRCUIT'S ERROR IN REQUIRING DIRECT EVIDENCE THAT THE DEFENDANT UNIVERSITY'S STATED REASONS FOR SALARY DISPARITIES WERE PRETEXTUAL.

The Sixth Circuit Per Curiam Opinion states:

> "Ward has not produced any evidence to show that [its reasons for salary disparities] are pretextual, and that the racial discrimination was instead a determinative factor in the University's salary decisions." A-5.

Plaintiff Ward produced ample evidence to demonstrate that the defendant University's reasons for salary disparities were pretextual, but the Courts below ignored this proof. The most glaring pretextual reason is the number of years of faculty experience Ward had when he

began his tenure at the defendant University. The defendant University said plaintiff Ward brought only 3.5 years of faculty experience when he came to the University of Tennessee. A-19.

Plaintiff Ward actually has an additional eight years from when he served as a researcher and lecturer at the Stanford Linear Accelerator Center, a research facility managed by Stanford University. A-64. Missed by the Courts below was this inference of discriminatory intent made manifest by the defendant University ignoring eight years of faculty experience possessed by plaintiff Ward.

Moreover, as further evidence that the defendant University's stated reasons for the salary disparity of plaintiff Ward, the courts below also neglected to take account of the ill racial animus against plaintiff exercised by the defendant University. Ignored by the Courts below in a consideration of summary judgment were the following instances of contemptible treatment of plaintiff Ward by the defendant University.

1. Upon completion of his first teaching assignment at the defendant university, plaintiff received student evaluations. All but two of these student evaluations were extremely positive as plaintiff Ward read them and turned them into the office of his department chair. After the lawsuit was filed, only the two negative student evaluations could be found; the 38 positive student evaluations were absent. A-34.

2. One semester, plaintiff Ward received his class assignment only a few days before classes began. The result was that plaintiff was professionally embarrassed

as he was ill-prepared for the task. No other professor in the physics department had ever been treated in this manner. A-34; A-53-54.

3. Although plaintiff Ward needs a lot of office space, his requests for transfer have always passed over when larger offices become available. A-34.

4. When it came time for department chairs to notify their Dean about the outside accomplishments of their various faculty members for the upcoming Dean's Award Ceremony, plaintiff Ward's chair (and supervisor) William M. Bugg, failed to report a $109,000.00 research grant awarded to plaintiff Ward from the Texas National Research Laboratory Commission. A-57.

5. The defendant University is forcing plaintiff Ward to utilize funds from one of his research grants to pay an assistant professor within the physics department to teach classes. This practice of using external research grant dollars for classroom teaching salaries is unheard of in the academic community. A-63-64.

Although each of these acts or omissions of the University could be incidental or innocent, the only conclusion to be drawn from considering them together is that plaintiff Ward is being treated differently than his white colleagues. That is an inference of discrimination and that is what the Courts below did not consider.

Plaintiff Ward did present evidence through inferences that racial discrimination was a determinative factor in the defendant University's salary decisions. Apparently, the Sixth Circuit wanted direct evidence. Such evidence is simply not required. In Title VII actions,

an employee does not have to present direct evidence that salary inequities are pretextual; inferences are sufficient. *Goetz v. Farm Credit Services*, 927 F.2d 398 (8th Cir. 1991). The Sixth Circuit ignored this fundamental rule of law.

CONCLUSION

Professor Ward recognizes and appreciates the esteem paid to the lower courts' decisions of discretion exercised in summary judgment matters. However, he also holds in high esteem the ability of this Court to exercise its discretion and allow review. This Court should give Professor Ward an opportunity to be heard by granting this Petition for Writ of Certiorari.

Respectfully Submitted,

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NOT RECOMMENDED FOR PUBLICATION

No. 93-6250

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BENNIE F.L. WARD, Plaintiff-Appellant, v. THE UNIVERSITY OF TENNESSEE, JOHN QUINN, Individually and as Chancellor of the University, LARRY RATNER, Individually and as Dean of the College of Liberal Arts of the University, and WILLIAM BUGG, Individually and as Physics Department Head at the University, Defendants-Appellees.	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TENNESSEE (Filed Nov. 1, 1994)

BEFORE: MARTIN, KRUPANSKY, and BOGGS, Circuit Judges

PER CURIAM. Plaintiff Bennie Ward brought a Title VII claim against the University of Tennessee and three members of its administration for racial discrimination in employment under 42 U.S.C. §§ 2000e-2000e-17 He appeals the district court's granting of defendants' Motion for Summary Judgment. Because Ward failed to show that the University treated him worse than other similarly situated faculty members, we affirm.

In 1985, the University of Tennessee at Knoxville initiated a plan to recruit black faculty. Dr. William Bugg,

the Chairman of the Department of Physics, recruited Ward, who is black, as an associate professor of physics. Dr. Ward's appointment began on September 1, 1986. Ward was awarded tenure in 1988, and promoted to full professor in August 1990. He is currently paid $44,370, and is the fifth highest paid full professor of the twenty-two regular professors in his department.

According to Ward, the University pays him less than similarly situated white faculty members. Ward claims both an international reputation in particle physics, and an impressive record in obtaining funding from sources outside the University. He asserts that he should have been hired as a full professor in 1986 instead of as an Associate Professor, and that he was not so hired because he was black. He also claims that he is similar in skill and background to other professors who received higher salaries. Ward contends that white faculty salaries are set by calculating a certain number of dollars per publication and per amount of outside funding raised by the faculty member. He asserts that, if his salary had been set according to these criteria, as he claims other professors' salaries are, his salary would be higher than it is now.

The University denies that Ward is paid less than similarly situated white faculty members. The University supported its argument with evidence showing that, when hired, Ward was the third highest paid of eight full-time Associate Professors, and was paid more than three full professors at that time. The University's evidence also shows that Ward's annual salary increases exceeded the average increase for physics professors during all but one of his years with the University. Finally, the University's evidence indicates that Ward's current salary is

more than four other physics professors, all of whom have more teaching experience than Ward and have been with the University longer. The University denied that faculty salaries are computed on a per publication or per outside funding dollar basis, as Ward asserts.[1] The University also offered specific nondiscriminatory reasons for its salary decisions.

Summary judgment is properly granted against a party who fails to make a sufficient showing to establish the existence of an element essential to the party's claim, on which the party will have the burden of proof at trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). In a Title VII action, the plaintiff initially bears the burden of showing by a preponderance of the evidence that the defendant acted to affect plaintiff's employment adversely and that the plaintiff is a member of a protected class, was qualified for the position or privilege, and was treated differently from similarly situated individuals of a different race. *McDonnell Douglas v. Green*, 411 U.S. 792, 802 (1973); *see also Ang v. Proctor & Gamble Co.*, 932 F.2d 540, 548 (6th Cir. 1991). If a plaintiff satisfies this requirement, the burden shifts to the defendant to provide a legitimate nondiscriminatory reason for the adverse employment decision. *West v. Fred Wright Construction Co.*, 756 F.2d 31, 33 (6th Cir. 1985). If the defendant offers a legitimate nondiscriminatory reason, the burden shifts back to the

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[1] Even so, the University attempts to calculate what faculty are paid per dollar of external funding they raise. These calculations show no correlation between salary and external funding obtained by a faculty member. The University provides similar calculations for publications that also show no correlation between salary and publication volume.

plaintiff to establish that the reason is pretextual and that intentional discrimination was the true basis for the decision. *Texas Dep't of Community Affairs v. Burdine*, 450 U.S. 248, 253 (1981) (citing *McDonnell Douglas*, 411 U.S. at 804); *Wilson v. Firestone Tire & Rubber Co.*, 932 F.2d 510, 514 (6th Cir. 1991) (age discrimination).

Ward asserts that comparisons of salary per article and salary per outside funds raised would indicate he is paid less than similarly situated colleagues.[2] The University has produced numerous charts and comparisons that refute this assertion. In response, Ward raises objections to the University's methodology. Ward does not offer comparisons of his own to support his assertions, nor does he provide testimony from compensation authorities or any other support for his arguments. Ward's own opinions about proper compensation comparison technique, even if sincerely held, are not particularly probative. The only evidence Ward produced to support his claim was handwritten notes prepared by Ward based on Ward's own information about his colleagues' salary and outside funds raised.

Nevertheless, even if the court accepted the claim that Ward has produced evidence that raises a genuine issue of material fact under *McDonnell Douglas*, the University has provided well-documented reasons for its salary decisions. Ward has not produced any evidence to show that these explanations are pretextual, and that racial discrimination was instead a determinative factor

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[2] To establish that another employee is similarly situated to him, a plaintiff must show that both employees are similar in all respects. *Mitchell v. Toledo Hosp.*, 964 F.2d 577, 583 (6th Cir. 1992).

in the University's salary decisions. *Wilson*, 932 F.2d at 514. As the district court notes in its Order, "[t]he plaintiff has offered no evidence to the contrary other than his personal opinion that racism is the motivating factor. While this could, in fact, be the case, in the complete absence of any evidence, the Court cannot draw this conclusion."

Ward simply has not provided evidence to state a *prima facie* claim of racial discrimination, nor has he produced evidence to rebut the University's explanations for its salary decisions. Therefore, the district court properly granted the University's Motion for Summary Judgment, and the dismissal in **AFFIRMED.**

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

BENNIE F. L. WARD	)	NO. CIV-3-92-478
v.	)	(Filed Aug. 11, 1993)
THE UNIVERSITY OF TENNESSEE, *ET AL.*	)	

ORDER

This is a Title VII action for racial discrimination in employment, 42 U.S.C. § 2000e, *et seq.*, with pendent state law claims under the Tennessee Human Rights Act. It is now before the Court on the defendants' motion for summary judgment. [Doc. 16].

THE PLAINTIFF'S CLAIMS

Dr. Bennie F. L. Ward is a Professor of Physics and the only black faculty member in the Department of Physics and Astronomy at the University of Tennessee/ Knoxville (UTK). He claims that, despite his international reputation in particle physics, his impressive procurement of outside funding, and his record of frequently-cited scholarly publications, he is paid less that [sic] similarly situated white faculty. He blames most of his problems on Dr. William M. Bugg, Head of the Department of Physics. As examples of racially discriminatory conduct, Dr. Ward alleges the following: that Dr. Bugg hired him in 1986 as an Associate Professor in a non-tenure track position at a salary of only $32,000.00, when, if it were not for his race, he could have been brought in

as a full Professor at a much higher salary; that, in calculating his appropriate rank, Dr. Bugg could have counted his time at the Stanford Linear Accelerator Center as academic/faculty experience, not just his three years as an Assistant Professor at Purdue University; that Dr. Bugg lead [sic] him to believe that he was being hired to develop a theoretical particle physics research group for UTK while, at the same time, he was also courting Dr. Francis E. Close, in exactly the same field, to do the same thing; that, although Dr. Close was highly comparable in ability, experience and reputation, Dr. Close, a white man, was brought in as a "Distinguished Scientist" at a salary of $108,000.00,[1] while he was not even paid half of that; that Dr. Bugg held up his first application for outside funding, not letting it get off campus until Dr. Close's own application could be sent at the same time; that this delay not only put them unnecessarily in direct competition for funds but cost him his summer salary for his first year; that on one occasion, Dr. Bugg changed his teaching assignment two days before classes were to start, putting him at a serious disadvantage and making it appear to his students that he was unprepared for his course; that just when he was being considered for promotion to full Professor, Dr. Bugg's secretary "lost" all of his favorable

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[1] The Distinguished Scientist program was created in 1984 by agreement between the University of Tennessee and Martin Marietta Energy Systems, Inc. on behalf of the U.S. Department of Energy facility at Oak Ridge National Laboratories. Under the agreement, renowned experts in fields of joint interest to UTK and ORNL are selected to hold joint appointments. UT's share of the funding for these positions is by special appropriation from the Tennessee Legislature and is not part of the regular departmental budgets.

student evaluations but managed to retain the two negative ones (one of which had very negative racial overtones); that on one occasion, when the Dean was asking department heads to submit names of faculty for an awards' ceremony, Dr. Bugg failed to report the [sic] he had gotten a $109,000.00 award from the Texas National Research Laboratory Commission (out-competing Distinguished Scientist Close); and that, despite the fact that space has occasionally become available, Dr. Bugg has not allocated him and his research group adequate work space. Dr. Ward also contends that he should have been offered the "Distinguished Scientist" position that was held by Dr. Francis E. Close and that he is paid less on a per publication basis or per funding dollar basis than any of his white colleagues.

THE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

The University first contends that any claim Dr. Ward might have with regard to the fact that he was not brought here as a Distinguished Scientist, and any salary claim based on a comparison with Dr. Close, is now time-barred. Dr. Close was not paid by UTK after December 31, 1989, – more than 300 days before the plaintiff filed his EEOC complaint. The defendants also argue that Dr. Ward cannot make a *prima facie* case of race discrimination based on a salary comparison with Dr. Close because he and Dr. Close were not similarly situated. Dr. Ward was hired for a regular faculty position funded by the Physics Department's budget while Dr. Close held an entirely different kind of appointment funded from other sources.

The Court is satisfied that most of the specific items mentioned by the plaintiff – such as the rank at which he was hired and the claim that he should have been given the Distinguished Scientist position, are time-barred. They are not being considered as compensable claims but only as possible evidence of racial bias in the way Dr. Ward has been treated by UTK. The ultimate question in this lawsuit is whether or not Dr. Ward is now being paid less than similarly situated white faculty members because of his race.

The University denies that any of its actions or inactions were racially motivated and offers legitimate, non-discriminatory reasons for its salary decisions. It also denies that Dr. Ward's salary per unit of production (whether grant dollars or publications) is less than that of every other white faculty member or that salaries are even determined in this fashion.

The University supports its motion for summary judgment with the affidavit of Dr. William M. Bugg, Head of the Department of Physics, and with various tables of academic salaries; salaries compared to external funding; salaries compared to refereed [sic] publications; and a table of citations to published works which compares Dr. Ward to Dr. Close. Dr. Bugg testifies that in 1985, then Provost George Wheeler initiated a black faculty recruitment plan under which a regular faculty position would be created and added to the budget of a department which successfully recruited a black faculty member. Dr. Bugg invited Dr. Ward to apply and, after he had visited the campus, the Physics faculty voted to hire him as an Associate Professor. Dr. Bugg initially offered Dr. Ward a

salary of $30,000.00,[2] but increased the starting salary to $32,000.00 when Dr. Ward got a competing job offer for a position as a Lecturer at California State Polytechnic University at San Luis Obispo. Dr. Bugg does not believe that Dr. Ward has received any other job offers from any academic institution since that one in 1986. Dr. Ward's appointment at UT began on September 1, 1986.

According to Dr. Bugg's affidavit, the last person hired at the rank of Associate Professor prior to Dr. Ward was Dr. James E. Brau. Dr. Brau began on September 1, 1982, with a starting salary of $26,000.00. When Dr. Ward joined the faculty, Dr. Brau was being paid $37,004.00 and was the highest paid Associate Professor. Dr. Stuart B. Elston was being paid $36,513.00, and was the second highest paid Associate Professor. Dr. Ward began his employment as the third highest paid of the eight full-time Physics faculty members holding that same rank. At that time, three full professors were also being paid less than Dr. Ward.

Dr. Bugg testified that, in negotiating starting salaries, the critical elements, from the University's prospective, are: the individual's qualifications (including prior faculty experience – of which Dr. Ward had relatively little); the academic market conditions; the University's need; the availability of funds; and the existing range of faculty salaries with the rank at which an individual was being hired. In Dr. Bugg's opinion, Dr. Ward's initial salary was commensurate with his qualifications and

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[2] Faculty salaries are for a nine-month academic year unless otherwise noted.

appropriate in terms of the other factors just mentioned. He offers into evidence letters he received from Dr. Ward's thesis advisor at Princeton University and from his former employer at the Stanford Linear Accelerator Center. Both letters attest to Dr. Ward's excellent intellectual achievements but both suggest that he may have some emotional immaturity.

Dr. Bugg testified further that a faculty member's salary at any given time is a function of: his starting salary; merit increases; increases tied to a promotion in rank; and extraordinary increases awarded in response to such things as a better offer received by the faculty member from another employer. During Dr. Ward's tenure at UTK, he never presented Dr. Bugg with an offer of a higher salary from another institution, although several of his colleagues have done so, pushing their salaries ahead of Dr. Ward's on the pay scale.

With regard to Dr. Ward's claim that he should have been offered the position of Distinguished Scientist that was given to Dr. Francis E. Close, Dr. Bugg testified that no current faculty member at UTK or the Oak Ridge National Laboratory (ORNL) was eligible for consideration for these special appointments and Dr. Ward had not been nominated by anyone as a candidate for a Distinguished Scientist position before his appointment to the faculty.

Because Dr. Ward has argued that his qualifications are comparable to those of Dr. Close, the University has compared the citations to Dr. Close's work with those of Dr. Ward's, using the *Science Citation Index*, the generally accepted authoritative source for such data. In the period

1981-1985 (before Dr. Ward joined the faculty at UT), Dr. Close's papers were cited by other writers 447 times. Dr. Ward's were cited 11 times. In the period 1986-1990, Dr. Close's publications were cited 774 times and Dr. Ward's were cited 50 times. If this is a good measure of how important other scientists in a field consider a person's work, then there is no comparison between Dr. Close's reputation and that of Dr. Ward. Even if it is only a very crude measure, and even if the figures need to be adjusted in various ways to take into account the relative age or importance of various publications, as contended by Dr. Ward, Dr. Close would still appear to the Court to be a more likely choice for the special appointment as "Distinguished Scientist." There is nothing about the appointment of Dr. Close which gives rise to the inference of racism.

Dr. Bugg's affidavit does not address all of the many slights Dr. Ward feels he has suffered such as the delay in sending off his first grant application, the last-minute switch in teaching assignments, the loss of his student evaluations, or the inadequate assignment of office space. However, the Court cannot help but note from the many letters in evidence, that Dr. Bugg made a considerable effort to promote Dr. Ward's career. After only one year, Dr. Bugg got Dr. Ward switched into a tenure track appointment; Dr. Bugg pushed through his award of tenure as of August of 1989; and saw that he became a full Professor by August of 1990. Considering the fact that Dr. Ward had not held a faculty position higher than Assistant Professor before he came to UTK, this is a very rapid rise through the University's ranks. While there are no

really big increases in salary, Dr. Ward's annual percentage salary increases during each year of his employment are commensurate with the department's average increases.[3]

In his deposition, Dr. Ward contended that salaries for white faculty members are determined by a mathematical calculation of dollars per number of publications and/or dollars per amount of external funding generated (through research grants, etc.), and that, if *his* salary had been determined by these objective criteria, he would be paid a lot more than he is now. At present, he is earning $44,370.00 and is the fifth highest paid full professor out of the 22 regular professorships in his department.[4] The University strenuously denies that salaries are related to any kind of units of production but, in response to Dr. Ward's argument, it has attempted to produce figures reflecting these ratios.

The highest paid regular member of the Physics Department, Dr. Sellin, has been paid $0.64 for every

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[3] In determining what percentage increase to give Dr. Ward each year that the state made increased salary funds available, Dr. Bugg said he took into account both Dr. Ward's comparatively strong research output and his comparatively week teaching record. He said, "More student complaints have been lodged against Dr. Ward than against any other faculty member in my memory."

[4] The highest paid regular faculty position in the Department of Physics and Astronomy is held by Professor Ivan A. Sellin whose salary is $90,165.00 per academic year. There are three Distinguished Scientists who are making over $100,000.00 per year and one Chair of Excellence created especially for former Chancellor John J. Quinn which [sic] is also paid over $100,000.00.

$1.00 of external funding he has generated. Dr. Bugg, on the other hand, who is the Head of the Department and the second highest paid regular faculty member, has been paid only $0.16 for every dollar of external funding. Dr. Ward has been paid $0.49 for every dollar generated, and this figure is higher than that calculated for other, higher-paid colleagues. For example: Dr. Sorenson ($0.23), Dr. Guidry ($0.24), Dr. Breinig ($0.29), Dr. Elston ($0.33), and Dr. Condo ($0.39). There appears to be no meaningful correlation between salary and amount of grant money generated. However, in light of the fact that six of his white colleagues are paid less per dollar of external funding, there is nothing to suggest that racism is a factor here.

Dr. Ward has also suggested that white faculty salaries are related to the number of refereed [sic] publications a given faculty member produces. Dr. Ward's salary, when measured in this fashion, suggests he is being paid $510.00 per academic year for each of his publications. Dr. Sellin, on the other hand is being paid only $456.00 per year for his publications. Dr. Bugg's salary calculates out as $632.00 per publication. For some reason,the University does not give this ratio for Drs. Sorenson, Guidry, Breinig, Elston and Condo (those used in the dollars-generated comparison) but instead gives the figures for Drs. Thompson ($439.00 per publication) and Dr. Bingham ($413.00 per publication). One could infer from this that some of the other, better paid colleagues are, in fact, being paid a salary that is in some way proportional to their publication output. However, the fact that the best paid regular faculty member, Dr. Sellin, is paid substantially less per publication than Dr. Ward, suggests that

this measure of salary is virtually meaningless. And the fact that three white faculty members have a less favorable ratio of salary per publication dispels an inference of racism. At best, publication output must be only one of the many factors that go into a salary determination.

The Court fully credits Dr. Bugg's evidence concerning how salaries are set initially and how they increase. Clearly, Dr. Ward would have a higher salary today if he had forced the issue by generating outside offers. The two colleagues of Dr. Ward's who are most similar to him in rank and number of years of academic experience are Dr. Joachim Burgdoerfer (paid $58,992.00) and Dr. Wolfgang H. Sandner (paid $56,222.00).[5] Both of these gentlemen are white, and both are paid considerably more per year than Dr. Ward. The University does not mention what their salaries are in relation to research funds generated or numbers of publications. However, Dr. Bugg's affidavit indicates that Dr. Burgdoerfer's salary was increased in response to offers of employment from Rice University in Houston, Texas, the University of Uttrecht in Holland, and Vanderbilt University. Dr. Sandner was hired in 1991, at a starting salary of $53,000.00 which was the best the University could do to keep him from taking a competing offer of $59,000.00 from the University of Oklahoma.

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[5] Because of the uniqueness of each faculty appointment; the differing market conditions in the years when they are hired; the different fields of research and types of outside funding required to support this research; and the differing pressures on UTK in terms of what it must pay to retain the faculty member, it is hard for this Court to say that *any* other employee is truly "similarly situated" for Title VII purposes.

The University appears to be paying each faculty member as little as it can get away with and still retain the person in its employment. The Court sees this as a result of the relatively poor overall funding at the institution rather than discrimination of any kind. In fact, none of the evidence before the Court gives rise to the inference that Dr. Ward's race has anything to do with his salary. The University has acknowledged the disparity in pay between Dr. Ward and those two most similarly situated faculty members, but offered legitimate, non-discriminatory reasons for these differences. The plaintiff has offered no evidence to the contrary other than his personal opinion that racism is the motivating factor. While this could, in fact, be the case, in the complete absence of any evidence, the Court cannot draw this conclusion.

Accordingly, the defendants' motion for summary judgment is hereby **GRANTED**; plaintiff will take nothing on his claim; and this action is **DISMISSED**.

ENTER:

/s/ Thomas G. Hull
THOMAS G. HULL
UNITED STATES
DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
NORTHERN DIVISION

BENNIE F. L. WARD,	)	
Plaintiff	)	
	)	
v.	)	**No. 3-92-0478**
	)	**Judge Hull**
THE UNIVERSITY OF TENNESSEE, et al.,	)	**Magistrate Murrian**
	)	
Defendants.	)	
	)	

AFFIDAVIT OF WILLIAM M. BUGG

STATE OF TENNESSEE)
) ss:
COUNTY OF KNOX)

William M. Bugg, being duly sworn, deposes and says:

1. I am a tenured Professor of Physics and Head of the Department of Physics at The University of Tennessee, Knoxville (UTK). I have served as Head of the Department of Physics since 1969. I have personal knowledge of the matters stated in this Affidavit.

2. As Head of the Department of Physics, I have initial responsibility for setting regular faculty salaries. Proposals for initial salaries and subsequent increases are initiated by me in my role as Head. My salary recommendations are subject to approval by the Dean of the College of Liberal Arts, the Vice Chancellor for Academic Affairs (formerly Provost), the Chancellor, and ultimately by the

Board of Trustees through adoption of the University's annual budget.

3. As Head of the Department of Physics, I also have initial responsibility for recruiting and hiring regular members of the Physics faculty. My recommendations concerning regular faculty appointments are subject to approval by the Dean of the College of Liberal Arts, the Vice Chancellor for Academic Affairs (formerly Provost), and the Chancellor.

4. In 1985, then Provost George Wheeler initiated a black faculty recruitment plan under which a regular faculty position would be created and added to the budget of a department which identified and successfully recruited a black faculty member. In the fall of 1985, I invited Dr. Bennie Ward, an elementary particle theory physicist who is black, to apply for a regular faculty position in the UTK Physics Department. Dr. Ward accepted my invitation and submitted his curriculum vitae and names of references. Dr. Ward was invited to the campus to give a colloquium and meet with the faculty. After his campus visit, the Physics faculty voted in favor of hiring Dr. Ward as an Associate Professor.

5. I enthusiastically supported the faculty's vote in favor of Dr. Ward and recommended to Provost Wheeler that Dr. Ward be hired as an Associate Professor at the salary of $30,000. I had earlier advised Provost Wheeler that I believed Dr. Ward to be

* * *

TABLE I
1986
ACADEMIC YEAR SALARIES
DEPARTMENT OF PHYSICS AND ASTRONOMY
THE UNIVERSITY OF TENNESSEE, KNOXVILLE

NAME	TITLE	YRS. FACULTY EXPERIENCE		SALARY
		TOTAL	UTK	
Mahan, Gerald D.	Disting'd Scientist	19	2	90,840
Siemens, Philip J.	Disting'd Scientist	12	0	84,000
Sellin, Ivan A.	Professor	22	16	67,285
Harris, Edward G.	Professor	29	29	60,000
Bugg, William M.	Professor/Head	27	27	58,750
Condo, George T.	Professor	23	23	46,581
Breazeale, Mack A.	Professor	29	24	44,100
Fox, Kenneth	Professor	23	22	42,892
Bingham, Carrol R.	Professor	20	20	42,795
Callcott, Thomas A.	Professor	18	18	41,057
Pegg, David J.	Professor	16	16	39,596
Brau, James E.	Assoc. Professor	4	4	37,044
Deeds, William E.	Professor	37	35	36,665
Elston, Stuart B.	Assoc. Professor	9	9	36,514
Blass, William E.	Professor	23	19	36,382
Guidry, Michael	Professor	10	10	35,764
Lovell, Robert J.	Professor	30	30	33,916
Thomson, John O.	Professor	28	28	33,758
Shih, Chia Chang	Professor	15	15	33,390
Hart, Edward L.	Professor	20	17	32,876
Ward, Bennie F. L.	Assoc. Professor	3.5	0	32,000
Breinig, Marianne	Assoc. Professor	6	6	31,974
King, David T.	Professor	36	31	31,856
Georghiou, Solon	Professor	13	13	31,458
Shieh, Shuang Y.	Assoc. Professor	21	17	31,200
Childers, Robert W.	Assoc. Professor	21	21	30,624
Thompson, James R., Jr.	Professor	15	15	30,450
Burgdoerfer, Joachim	Assist. Professor	4	3	30,000
Lide, Robert W.	Assoc. Professor	29	29	28,897
Handler, Thomas	Assoc. Professor	9	9	28,343
Deserio, Robert	Assist. Professor	3	3	27,728
Sorensen, Soren P.	Assist. Professor	2	2	27,712

12. Initial salaries of faculty members are negotiated between the University and the individual. In my 24 years of service as Department Head, I have negotiated many initial faculty salaries for the University. From the University's perspective, the critical elements in determining initial salary are the individual's qualifications (including prior faculty experience), market conditions, the University's need, availability of funds, and the existing range of faculty salaries within the rank at which the individual is being hired. Dr. Ward's initial salary of $32,000 was commensurate with his qualifications, his market value, the University's need, available funds, and the existing range of salaries for Associate Professors.

13. A faculty member's salary at any given time is a function of the following factors:

(1) initial salary;

(2) merit increases awarded over the faculty member's length of service with UTK from funds appropriated by the Tennessee Legislature for salary increases;

(3) increases awarded for promotion in rank; and

(4) extraordinary increases awarded in response to

(a) relative inequities within a department resulting from salary compression;

(b) a better offer received by the faculty member from another employer; or

(c) exceptionally meritorious performance by the faculty member.

Since I have been serving as Department Head, no extraordinary increase has been awarded because of exceptionally meritorious performance unless the faculty member also presented a better offer from another employer.

14. Funds were appropriated by the Tennessee Legislature for the following average salary increases during each year of Dr. Ward's employment:

1987	1988	1989	1990	1991	1992	1/1993	7/1993
4.0%	4.0%	4.0%	4.0%	0.0%	0.0%	4.0%	2.0%

15. The following table demonstrates salary increases awarded Dr. Ward in relation to the average increase for all Physics faculty members (other than the specially funded Distinguished Scientist and Chair of Excellence positions):

	1987	1988	1989	1990	1991	1992	1993
Ward	4.1%	4.0%	4.0%	8.8%	0.0%	0.0%	13.2%
Average	3.8%	4.3%	3.9%	3.9%	0.0%	0.0%	8.8%

No funds were appropriated by the Tennessee Legislature for merit salary increases in 1991 or 1992. Only increases for promotion in rank were awarded to Physics faculty members in 1991 and 1992.

* * *

Francis E. Close

Year		Citations by Others	Self-Citations
1981		68	3
1982		77	1
1983		94	0
1984		78	3
1985		130	4
	Total	447	11
1986		149	4
1987		120	5
1988		145	20
1989		185	8
1990		175	10
	Total	774	47

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Bennie F.L. Ward

Year		Citations by Others	Self-Citations
1981		6	0
1982		0	3
1983		3	14
1984		1	0
1985		1	5
	Total	11	22
1986		3	6
1987		8	23
1988		10	15
1989		16	6
1990		13	1
	Total	50	51

27. Since 1990, the frequency of citation to Dr. Ward's publications has declined, as the following data from the *Science Citation Index* reveals:

	Bennie F. L. Ward	
Year	Citations by Others	Self-Citations
1991	9	3
1992	5	4

28. Dr. Close left UTK and ORNL at the end of 1989 to return to the Rutherford Appleton Laboratory in England. Dr. Close is currently the Head of the Theory and Data Handling Division of the Rutherford Appleton Laboratory. The University paid no salary to Dr. Close after December 31, 1989.

29. After the first year of Dr. Ward's appointment at UTK, I recommended to Provost Wheeler that Dr. Ward's appointment be converted to a tenure-track appointment immediately rather than at the end of the original two-year term. A true and exact copy of my November 20, 1987, letter making that recommendation is attached as **Exhibit I** to this Affidavit. The Provost agreed, and Dr. Ward's position was converted to a tenure-track position, effective retroactively to September 1, 1987.

30. In 1988, just two years after his arrival at UTK, I recommended that Dr. Ward be granted tenure. A true and exact copy of my December 12, 1988, letter to Dean Ratner is attached as **Exhibit J** to this Affidavit. The Board of Trustees granted Dr. Ward tenure effective August 1, 1989.

31. In the fall of 1989, Dr. Ward was considered by the Physics Department Professors for promotion to the

rank of Professor even though he had not served the normal five years in rank as an Associate Professor. The faculty vote was 5-4 in favor of promotion. The negative votes reflected concerns about Dr. Ward's teaching effectiveness because of persistent student complaints about his insensitivity, unwillingness to answer questions, and tendency to demean or embarrass students in class. More student complaints have been lodged against Dr. Ward than against any other faculty member in my memory. Undergraduate teaching is a fundamental part of UTK's mission. For this reason, complaints about Dr. Ward's effectiveness with students have resulted in my assigning Dr. Ward exclusively to graduate-level courses. Nevertheless, I endorsed Dr. Ward's promotion to the rank of Professor because his weakness in teaching performance was balanced, in my view, by his research performance. I continued to encourage his promotion after the Promotion and Tenure Committee for the College of Liberal Arts, which reviews promotion candidates for Dean Ratner, voted 9-0 against promotion because of concerns about Dr. Ward's teaching effectiveness. Dean Ratner accepted my recommendation in favor of Dr. Ward's promotion, rather than the College Committee's recommendation against promotion, and Dr. Ward was promoted to Professor effective August 1, 1990.

32. With his promotion to the rank of Professor, Dr. Ward has achieved the highest promotion available to a regular faculty member. Dr. Ward is not eligible for appointment to a Distinguished Scientist position because the criteria for those special positions exclude all current employees of the University. Likewise, there has been no Chair of Excellence or other endowed chair or special

professorship for which Dr. Ward has been denied consideration. The only endowed chair in the department is the Chair of Excellence created upon former Chancellor John Quinn's stepping down from his administrative post.

33. The large increases in Dr. Ward's external funding occurred in 1991 and 1992, years in which no merit salary increases were awarded members of the Physics faculty because of lack of funding.

34. Dr. Ward claims that his salary should be determined by a purely mathematical calculation of dollars per number of referred publications and amount of external funding – dollars per unit of production. The University of Tennessee does not determine faculty salaries in the purely objective and quantitative manner asserted by Dr. Ward, and I am aware of no university which does. Salaries at UTK and other comparable universities involve qualitative, and thus necessarily subjective, judgments of a faculty member's performance in teaching and research in relation to other faculty members in the department. Dr. Ward's teaching performance has been below average in the department, and his research performance has been somewhat above average. The merit increases in salary Dr. Ward has received at UTK are commensurate with the quality of his overall performance in relation to other members of the department.

* * *

Salary Per External Funding Dollar

1986 - 1993

	Total Salary*	÷	Total Funding	=	Salary Per Funding Dollar
Ward	$ 253,483		$ 516,298		49¢
Bugg	463,878		2,841,933		16¢
Sorenson	237,397		1,037,652		23¢
Guidry	286,669		1,192,562		24¢
Breinig	250,734		856,255		29¢
Elston	285,344		858,938		33¢
Condo	358,278		918,833		39¢

* Total salary is the aggregate of salaries for the 1986-87 academic year through the 1992-93 academic year.

Salary Per Refereed Publication

1993

	Current Salary	÷	Refereed Publications	=	Salary Per Publication
Ward	$ 44,370		87		$ 510
Sellin	90,165		198		456
Thompson	46,940		107		439
Bingham	53,308		129		413

The absurdity of Dr. Ward's "per-unit-of-production" method for calculating faculty salaries is dramatically presented by a comparison of Dr. Ivan Sellin's salary "per-unit-of-production" with mine. Over the period from 1986 to 1993, Dr. Sellin's salary represents approximately 64¢ for every $1.00 of external funding, and my salary represents only 16¢ for every $1.00 of external funding. On the other hand, Dr. Sellin's salary represents only $456 for every one of his refereed [sic] publications, while mine is $632 for every one refereed [sic] publication. Both Dr. Sellin and I are experimentalists, but Dr. Sellin is the best experimentalist in the department. His salary of $90,615 (almost $15,000 more than mine) reflects that fact. The fact that I am responsible for substantially more external funding than Dr. Sellin but make substantially less than he demonstrates that Physics salaries are not determined on a quantitative, "per-unit-of-production" basis. Similarly, even though Dr. Sellin has significantly more refereed [sic] publications than I, his salary per unit of publication is significantly less than mine. This further demonstrates that Physics salaries are not based on a purely objective calculation of units of production.

36. I have read the deposition given by Dr. Ward in the pending state court action, and am astounded to find that he targets me as the person responsible for his allegedly unfair treatment. I have been Dr. Ward's strongest supporter at UTK since I proposed his hiring in 1986. I continue to support Dr. Ward and am pleased to have him as a member of the Physics Department, even though he can be difficult to deal with at times. I am particularly astounded that Dr. Ward claims he should be paid the

salary of a Distinguished Scientist. Dr. Ward's reputation and

* * *

Exhibit I to Bugg Affidavit

THE UNIVERSITY OF TENNESSEE
KNOXVILLE

Called dept. on 12/14/87
Regarding Probationary Period

November 20, 1987

[SEAL]

College of Liberal Arts
Department of Physics and Astronomy

Dr. George W. Wheeler, Provost
University of Tennessee
517 Andy Holt Tower
Knoxville, Tennessee 37996

Dear George:

As you recall, our initial appointment of Bennie Ward was a two-year, non-tenure track position. The reason for this was Bennie's absence from the academic scene for several years immediately prior to coming to Tennessee. I wish to recommend very strongly that Bennie be moved from a non-tenure track to a tenure track position.

His efforts in the Physics Department have proved to be exemplary. He has maintained an exceedingly strong research program of his own and has interacted most profitably with the experimental elementary particle group in the department. He has taught the introductory course in mathematical methods in physics both last year and in the current year. He has interacted exceedingly well with our other theoretical physicists and our Distinguished Scientists. His performance has been in every way such that he should be moved to tenure track.

Sincerely,

/s/ Bill
William M. Bugg
Professor and Head

APPROVED:

/s/ C. O. Jackson
Larry A. Ratner, Dean
College of Liberal Arts

11/24/87
Date

H. List[illegible], Jr.
12/2/87

Exhibit J to Bugg Affidavit

THE UNIVERSITY OF
TENNESSEE
KNOXVILLE

December 12, 1988

[SEAL]

College of Liberal Arts
Department of Physics and Astronomy

Larry Ratner, Dean
College of Liberal Arts
University of Tennessee
226 Ayres Hall
Campus

Dear Dean Ratner:

I wish to strongly recommend that Bennie F. L. Ward be granted tenure at the rank of Associate Professor in the Department of Physics. This is in spite of a rather close faculty vote 7 to 2 (with 2 abstentions) on this subject. the faculty expressed some reservations about Bennie's teaching and in my opinion failed (because they work for different subfields) to recognize Bennie's superb and significant theoretical contribution to high energy physics. If one looks at his recommendations, it is apparent that he is highly regarded by outstanding physicists at the finest institutions all over the country.

I am even tempted to recommend promotion as well, but narrowly agree with the faculty that consideration for promotion should be postponed.

Sincerely,

/s/ William M. Bugg
William M. Bugg
Professor and Head

dc

IN THE CHANCERY COURT FOR KNOX COUNTY, TENNESSEE

BENNIE F. L. WARD, Plaintiff, v. THE UNIVERSITY OF TENNESSEE, ET AL., Defendants.	))))))))	No. 111560-3

AFFIDAVIT OF PROFESSOR BENNIE F. L. WARD

STATE OF TENNESSEE)
) ss
COUNTY OF KNOX)

The Affiant, after being duly sworn according to law, deposes and says as follows:

1. My name is Dr. (Professor) Bennie F. L. Ward, and I have personal knowledge of the facts and matters contained herein.

2. I am a Professor of physics at the University of Tennessee, Knoxville, ("The University"), where I have been employed since 1986.

3. I am familiar with the *Science Citation Index*, and I know about its database as well as how it must be interpreted. The *Science Citation Index* is a raw and inaccurate indicator of the productivity of a particular author. This *Index* is based upon the total citations of any particular person during the course of a year. There are references to lay articles such as those which sometimes appear in magazines such as *New Scientist* and *Nature*, and citations

to works that are performed by a person as a part of his or her graduate studies, papers that are usually done in collaboration with other, more notable scientists, and to which the cited person rarely has made a great contribution. Some of these citations can be as much as twenty or more years old. This *Index* also does not include as a part of its database references to recent graduate research studies, PHD theses, and other scholarly works of the great universities of the world.

4. I have examined the table giving the citations by myself and Frank Close which is a part of the Affidavit of William M. Bugg, and I know that there is an adjustment to be made to it before it has any value as an indicator of Close's work. I have also examined the citations themselves and and [sic] can make the following observations: Of the 149 citations deemed for the year 1986, approximately 70 are to Close's review book on the elementary physics of the quark-parton model of some 20 years ago. Approximately 20 more are to reviews of other people's research, another 10 are to lay articles and books like Close's own high school level *Cosmic Onion*, and another approximately 50 are to two papers, *Physics Review D3*, 1004 (1985), and *Physics Letters B129*, 346 (1983). These latter two papers are *wrong* explanations of the EMC effect.

5. I am familiar with the case of Dr. R. Deserio, a physics professor in our department. Dr. Deserio collaborated with two other professors to produce several research projects, so he had the same number of citations as the others. The University said, however, that Dr. Deserio did not have a significant enough impact on the

cited material to warrant consideration of this material as a determinant of whether to promote Dr. Deserio.

6. At some time in the past, prior to my review for promotion to full professor, all my student review forms with the exception of two "disappeared" from Bugg's office. The two forms which were left were highly critical of me as a professor, but were written by two students who performed extremely poorly in my class. One of the students whose form was left was a person whom Bugg had informed me had been heard uttering racist remarks about me and my class. Immediately after reviewing the forms, but before they were lost, Bugg informed me that I had the best reviews of any first-year professor in his memory.

7. I maintain a large staff of graduate students as a part of my responsibilities at The University, and as such, I require a lot of office space. In spite of the fact that several offices larger than the one I use have come open, and I have requested a transfer to those offices, nevertheless, Bugg has consistently denied me the use of larger office space. Another form of harassment which has been directed at me is the scheduling of some of my classes in a building other than the principal building for physics, which causes great inconvenience for me as a professor, and tends to alienate some of the students. Additionally, I was once assigned to teach a particular class, but, less than forty-eight (48) hours before the start of classes, Bugg changed my class assignment and I was required to teach a different class. This created a large amount of extra work for me, and caused some of my students to perceive that I was poorly prepared for this class in the

beginning, thus causing them to write less than excellent reviews of me.

8. Although I won the Texas National Research Laboratory Commission project on my own, defeating teams of physicists from across the United States, (including one from The University of Tennessee, headed by Frank Close), Bugg did not even mention my award when asked by the Dean for a list of awards by Physics faculty for use in the Dean's Honors Convocation. Along these same lines, when the Dean asked for nominations for the outstanding research record for faculty arriving within the time frame in which I arrived at the University, I was not even nominated, despite my record of awards and research contributions in the international community. See, table 1.

9. One time, when I was speaking with Bugg, he made the remark that he needed to protect his staff of professors from me.

FURTHER AFFIANT SAYETH NOT.

/s/ Bennie F.L. Ward
Dr. Bennie F.L. Ward

Sworn to and subscribed before me, this the 5th day of November, 1992.

/s/ Maxine L. Lyan
Notary Public

My Commission expires: 10-18-93

* * *

[p. 41] EQUIVALENT FOR YOUR PERCENTAGE APPROXIMATELY WHAT OTHER PEOPLE RECEIVED FOR THEIR PERCENTAGES?

A IN FACT, IT'S NOT THAT I UNDERSTOOD THAT, I COULD SEE IT BECAUSE IN PURDUE, THEY WOULD PUBLISH THE SALARIES AND SEND THEM TO US.

Q SO, YOU SAW THAT YOU ONLY –

A SURE, YOU COULD JUST LOOK AT EVERYBODY'S SALARY IN YOUR WHOLE DEPARTMENT. IT WAS SOMETHING I THINK TENNESSEE SHOULD DO. THEY DON'T WAIT FOR US TO GO LOOKING FOR OUR SALARIES. THEY JUST HAVE A – THEY HAD A COMPUTER PRINTOUT OF ALL THE SALARIES ON THE UNIVERSITY PAYROLL, AND THEY MAILED THIS TO ALL OF THE FACULTY. SO, YOU JUST COULD LOOK, YOU KNOW, IT JUST CAME AROUND. AS SOON AS THE RAISES WENT INTO EFFECT, IT TAKES THEM AWHILE TO GET EVERYTHING PRINTED.

Q I THINK YOU COULD UNDERSTAND, THOUGH, THAT THERE MAY BE OTHER INDIVIDUALS WHO WOULD NOT WANT THEIR SALARIES PUBLISHED?

A WELL, IT'S PUBLIC INFORMATION TO EVERYBODY IN – IF YOU WORK FOR THE STATE, YOU ARE A STATE EMPLOYEE, AND THIS IS STATE-WIDE, SO THIS IS PUBLIC INFORMATION.

Q BUT MY QUESTION WAS YOU COULD UNDERSTAND WHY EVERYBODY –

A I CAN UNDERSTAND WHY SOME PEOPLE MIGHT

* * *

[p. 143] Q AND THAT YOU UNDERSTAND THAT THE THREE BIG AREAS THAT FACULTY MEMBERS WORK IN IS IN INSTRUCTION, IN RESEARCH, AND IN PUBLICATION. YOU AGREE WITH THAT?

A UH-HUH.

Q AND THAT IN ADDITION TO YOUR RESEARCH AND PUBLICATION ACTIVITIES, THAT TEACHING IS ALSO IMPORTANT?

A ABSOLUTELY.

Q AND THE WAY IN WHICH A DEPARTMENT HEAD EVALUATES HIS PEOPLE DEPENDS UPON THEIR RESEARCH, THEIR PUBLICATION AND THEIR TEACHING?

A THAT IS ALSO TRUE.

Q AND YOU WOULD AGREE THERE ARE PEOPLE – THERE ARE FACULTY MEMBERS AT VARIOUS UNIVERSITIES, PHYSICS DEPARTMENTS, AS WELL AS AT U.T. WHO HAVE – SOME HAVE MORE STRENGTHS IN TEACHING, OTHERS HAVE MORE STRENGTH IN PUBLICATION AND RESEARCH?

A WELL, HIGHER PAID PHYSICISTS, THERE'S NO EXAMPLE OF A UNIVERSITY REWARDING PEOPLE IN PHYSICS. NO MAJOR RESEARCH UNIVERSITY. SEE, THE WORD RESEARCH UNIVERSITY IS NOT JUST SOME DRESSING. IT REALLY MEANS – AND THE STRESS OF THE UNIVERSITY OF TENNESSEE, SINCE I

GOT HERE, HAS BEEN TO BECOME WHAT THEY CALL A MAJOR RESEARCH UNIVERSITY.

NOW, THIS MEANS THAT RESEARCH AND [p. 144] PUBLICATIONS ARE THE PREPONDERANT-WEIGHED BASIS UPON WHICH THE SALARIES ARE BEING DONE IN MY DEPARTMENT. TEACHING IS ONLY BEING CONSIDERED IN SOME KIND OF FORMAL WAY. AND IF YOU LOOK AT THE WHITE FACULTY OF MY FACULTY – LOOK AT THEM. YOU WILL SEE WHAT I JUST TOLD YOU IS TRUE. THE PEOPLE, EXCEPT FOR A FEW ABERRATIONS WHICH HAVE TO DO WITH BUGG'S MISJUDGMENTS, THIS IS A DIRECT CORRELATION FOR THE WHITE FACULTY BETWEEN THEIR RESEARCH AND PUBLICATIONS AND THEIR SALARY. WHAT THEY DO IN TEACHING IS SIMPLY NOT A MAJOR PLAYER IN THIS.

OF COURSE, IF THEY REFUSE TO TEACH, THIS WOULD BE SOMEWHAT DIFFERENT, BUT WHO'S GOING TO REFUSE TO TEACH. WE ALL ENJOY GIVING CLASSES. WE ARE PROFESSORS, WE LIKE GIVING CLASSES. BUT TEACHING IS IMPORTANT, BUT SALARIES IN THE UNIVERSITY OF TENNESSEE OR ANY OTHER MAJOR RESEARCH UNIVERSITY IN THE UNITED STATES OF AMERICA ARE PREDOMINANTLY DETERMINED BY RESEARCH, PUBLICATIONS AND INTERNATIONAL RECOGNITION OF YOUR RESEARCH.

Q WHEN YOU CAME HERE IN '86, DID YOU CONSIDER THE UNIVERSITY OF TENNESSEE TO BE A MAJOR RESEARCH UNIVERSITY?

A I CONSIDERED THEM TO BE STRIVING TO BE A MAJOR RESEARCH UNIVERSITY. THAT IS WHAT THE PROVOST TOLD ME. THAT IS WHAT HE TOLD ME.

Q BUT YOU UNDERSTAND THAT OUR TOTAL

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[p. 151] WAS GOING ON UNTIL AFTER THE FACT. I JUST KEPT ASKING WHY ISN'T IT GOING ANYWHERE, AND BILL KEPT TELLING ME, WELL, THEY ARE PROCESSING IT. OKAY. SINCE IT WAS THE FIRST ONE I EVER DID HERE, WHAT ELSE WAS I TO BELIEVE? YOU DON'T COME INTO A PLACE THINKING THE GUY IS GOING TO MESS OVER YOU.

Q DID YOU THINK THEY WERE TRYING TO MESS OVER YOU WITH YOUR FUNDING?

A THEY HELD UP MY PROPOSAL FOR ANOTHER PROFESSOR TO COME IN TOWN, YES, BECAUSE IT MEANT THE LAY-OVER OF AT LEAST A YEAR IN THE FUNDING THAT I GOT.

Q WAS IT A YEAR'S DELAY?

A YEAH, BECAUSE WE DIDN'T SEND IT IN. IN OTHER WORDS, INSTEAD OF GOING IN AND GETTING FUNDED FOR MARCH OF '87, WHAT IS THAT – YES, MARCH OF '87, REALLY THE MONEY COULDN'T BE USED UNTIL MARCH OF '88 OR SOMETHING BECAUSE WE DIDN'T PROCESS IT ON TIME. JUST SOME STUPID REASON LIKE THAT.

AND THIS WAS ALSO SO THAT CLOSE'S THING COULD GO IN IN COMPETITION WITH MINE. IT

TURNED OUT THIS IS WHAT IT ENDED UP BEING, AND WHEN WE FINALLY SENT THEM IN WAS WHEN CLOSE GOT HERE AND FINISHED PREPARING HIS PROPOSAL. THEN, THEY SENT THEM STRAIGHT THROUGH THE ADMINISTRATION, RIGHT ON INTO WASHINGTON.

Q WERE THEY SENT IN AS COMPETING [p. 152] PROPOSALS?

A THEY WERE, IN FACT.

Q THEY WERE NOT JOINT PROPOSALS?

A THEY WERE COMPETING PROPOSALS BECAUSE THAT IS HOW THE D.O.E. DOES IT, YOU KNOW. WHEN THEY HAVE TWO NEW THINGS, THEY PUT THEM OUT SEPARATELY TO SEE HOW THEY DO, AND THEN THEY WILL COMBINE THEM LATER.

Q WERE THEY COMBINED LATER?

A THEY WERE.

Q WERE THEY COMBINED INTO ONE CONTRACT LATER?

A THEY WERE COMBINED INTO ONE CONTRACT AFTER HE DIDN'T GET ANY FUNDING.

Q HE DIDN'T GET ANY FUNDING THE FIRST YEAR?

A NO, HE DIDN'T GET ANYTHING. AND SO, THEY TOOK SOME OF MINE AND GAVE IT TO HIM.

Q THE FIRST YEAR?

A YEAH.

Q WHO GAVE SOME OF IT TO HIM?

A WELL, THE GUY IS DEAD NOW, BUT IT WAS A GUY NAMED ERNEST COLEMAN THAT WAS THE D.O.E. CONTRACT MONITOR.

Q AT D.O.E. IN WASHINGTON?

A YEAH. HE MANAGED TO GET ME FUNDED, AND [p. 153] CLOSE DIDN'T GET ANYTHING.

Q WHAT WAS YOUR FUNDING LEVEL FOR THE PART OF IT THAT WAS GIVEN TO CLOSE?

A WELL, IT WAS 40K BEFORE THEY SPLIT IT.

Q AND HOW WAS IT SPLIT?

A TWENTY-TWO, EIGHTEEN.

Q WHO GOT THE TWENTY-TWO?

A ME.

Q AND THAT WAS A DECISION MADE BY D.O.E.?

A THAT WAS DONE HERE.

Q THAT WAS DONE AT U.T.?

A YEAH. SEE, THESE CONTRACTS BELONG – I SAID ERNEST COLEMAN DID IT. I MEAN HE DID IT WITH THE INPUT OF THESE ADMINISTRATORS. I MEAN, THE CONTRACT BELONGED TO THE UNIVERSITY, AS YOU KNOW, AS A LAWYER.

Q YES.

A I'M WORKING AS A SERVANT OF THE UNIVERSITY ON THE CONTRACT. SO, THE UNIVERSITY

ADMINISTRATION HAS THE FINAL SAY IN HOW THE MONEY IS ACTUALLY USED BECAUSE THEY ADMINISTERED THE CONTRACT, AND SOMEHOW WE COULDN'T – D.O.E. IS NEVER ABLE TO TELL YOU THIS KIND OF INSIDE INFORMATION. BUT ALL I KNOW FROM TALKING – I HAPPEN TO KNOW THIS COLEMAN. HE WAS ACTUALLY SOMEONE THAT I KNEW. AND HE TOLD ME MY FUNDING LEVEL WAS FORTY THOUSAND DOLLARS, AND THAT CLOSE DID NOT HAVE

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[p. 186] WHAT HE SAID. HE WAS RECRUITING, OKAY? AND SO, HE FELT THE PROPER RANK FOR ME WAS ASSOCIATE PROFESSOR – WHAT IS IT DOWN HERE – NON-TENURED TRACK, TWO YEARS, WITH THE UNDERSTANDING THAT IF EVERYTHING GOES WELL, YOU CAN BECOME TENURED TRACK. THAT WAS SOMETHING THAT HE AND THE PROVOST WORKED OUT. THERE WAS NOTHING REQUIRING THEM TO DO THAT.

Q IF I TELL YOU THAT THE UNIVERSITY HAD ADVERTISED A POSITION OF ASSOCIATE PROFESSOR IN PHYSICS, YOU HAVE NO REASON TO DISPUTE MY STATEMENT?

A I HAVE NO REASON TO DISPUTE THAT.

Q OKAY. I STILL AM A LITTLE BIT CONFUSED. IT WAS NOT – THERE WAS NOTHING WRONG WITH SAN LUIS OBISPO OFFERING YOU THIRTY-SEVEN THOUSAND TO DEVELOP YOUR OWN PROGRAM THERE, IF YOU GOT EXTERNAL FUNDING, BUT IT

WAS – IT WAS RACIAL DISCRIMINATION FOR U.T. TO HIRE YOU AT THIRTY-TWO?

A WHEN THEY HIRE WHITE PEOPLE AT ONE HUNDRED.

Q OKAY. THEREFORE, YOU ARE SAYING SINCE HE HAD BEEN RECRUITED AS DISTINGUISHED SCIENTIST, IT WAS RACIAL DISCRIMINATION FOR YOU NOT TO HAVE BEEN PURSUED –

A THAT'S RIGHT. BECAUSE WE HAVE THE SAME ACADEMIC RECORD.

Q SAME ACADEMIC RECORD. YOU HAD THE SAME [p. 187] RANKING IN THE WORLD?

A IN THE FIELD.

Q IN THE FIELD, AS FRANK CLOSE?

A AS HE DOES. IN FACT, NOW I'M HIGHER THAN HE IS, AS YOU SEE BY THESE D.O.E. CONTRACT AWARDS, WHERE I KEEP CONSISTENTLY BEATING HIM THREE STRAIGHT YEARS IN A ROW.

Q AND YOU THINK THE FUNDING LEVEL PROVES THAT YOU ARE HIGHER IN RANKING?

A YES. NOW, ACTUALLY, MY RESEARCHES HAVE A MUCH HIGHER EFFECT ON THE FIELD THAN [sic] HIS EVER HAD WHICH IS BORNE OUT BY THESE AWARDS THAT I HAVE BEATEN HIM IN THE LAST THREE TIMES, YES. THESE AWARDS – THE AMOUNT OF THESE AWARDS IS IN DIRECT PROPORTION TO THE SIGNIFICANCE OF OUR RESEARCH IN THE FIELD.

Q WHO TOLD YOU THAT?

A THE DEPARTMENT OF ENERGY.

Q WHO IN THE DEPARTMENT OF ENERGY?

A YOU CAN TALK TO THE CONTRACT MONITORS THAT WE HAVE, THIS GUY, ENLOWE RITTER.

Q ENLOWE –

A RITTER.

Q L-O-W-E, RITTER, R-I-T-T-E-R?

A THAT'S RIGHT.

Q DO YOU KNOW WHAT HIS CODE IS AT D.O.E.?

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[p. 200] – THE PRICE FOR A PERSON IN THE MARKETPLACE MIGHT GO DOWN DEPENDING UPON THE DEMAND. BUT WHAT WE ARE DISCUSSING IS THE PRICE OF A PERSON IN A PARTICULAR PART OF THE MARKETPLACE WHERE THE PRICE PER UNIT VALUE HAS BEEN DETERMINED BY A WHITE PROFESSOR.

Q BECAUSE YOU ARE AS GOOD AND NOW BETTER THAN CLOSE?

A YES.

Q IT'S THAT SIMPLE?

A I'M TELLING YOU. NOW, YOU JUST KEEP COMING BACK TO THAT.

Q I GUESS IF YOU ARE AS GOOD AND NOW BETTER THAN CLOSE, WOULD YOU ALSO SAY YOU ARE AS GOOD OR BETTER THAN ANYBODY ELSE IN THE FACULTY IN THE PHYSICS DEPARTMENT AT U.T.?

A THIS IS BORNE OUT BY MY RECORD ALSO.

Q IS THE ANSWER TO THAT YES?

A YES.

Q OKAY. THEREFORE, THAT IS WHY YOU'RE BEING DISCRIMINATED AGAINST BECAUSE OF YOUR RACE, IT MUST BE RACE. IS THAT –

A ABSOLUTELY. WE ARE FINDING THAT THERE'S A – THERE'S A CORRELATION BETWEEN SALARIES AND A DISCONTINUITY AT ME. AND THE ONLY DIFFERENCE BETWEEN ME AND THESE PEOPLE IS MY RACE.

* * *

[p. 203] TALKING ABOUT.

Q AND YOU'RE TELLING ME THAT THE REASON YOU HAVEN'T HAD OFFERS SINCE YOU CAME TO THE UNIVERSITY IS SIMPLY THAT THE MARKET IS CLOSED. THERE ARE NOT ANY OPENINGS OUT THERE?

A FOR PEOPLE OF THE TYPE – YOU SEE, YOU SEE, THE POINT IS IF I ONLY WANTED ONE JOB, PROBABLY, I WOULD HAVE HAD OFFERS. BUT I HAVE FIVE PEOPLE WITH ME. I COME WITH FIVE PEOPLE NOW. SO, THE CHANCE OF GETTING SIX POSITIONS IN ANOTHER UNIVERSITY AT ONE TIME

ARE ALMOST ZERO FOR ANYBODY, NOT [sic] MATTER HOW GOOD THEY ARE. DEANS JUST DON'T OPEN UP SIX POSITIONS AND GIVE THEM TO ONE FIELD.

Q AREN'T THERE OTHER PEOPLE WORKING FOR YOU ON SOFT MONEY?

A WELL, THEY ARE ON MY CONTRACT, BUT I WANT – IN ORDER TO MOVE THEM, I WOULD INSIST ON GIVING THEM A CHANCE TO MOVE INTO THE FACULTY. LIKE, ONE OF THEM WAS ABOUT TO MOVE INTO THE FACULTY THIS SUMMER. I'M IN THE PROCESS – THAT'S WHY I'M BACK HERE –

Q SO, YOU WANTED TO MOVE –

A THAT'S WHY I'M BACK HERE RIGHT NOW, BECAUSE I'M IN THE PROCESS OF MOVING ONE OF THEM OVER TO THE REGULAR FACULTY. THAT'S WHY I CAME BACK, TO DO SOME PAPERWORK ON THAT.

Q LET ME TALK ABOUT – LET ME – I WAS

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[p. 206] A YEAH, BUT THAT DOESN'T CHANGE THE FACT THAT WHILE HE WAS HERE, HE SET THE STANDARD OF THE UNIVERSITY FOR PAY FOR THE PEOPLE WHO DO THE KIND OF WORK HE AND I DO. SO, OF COURSE, HE GOT MAD AND QUIT BECAUSE OF A WHOLE LOT OF OTHER PROBLEMS THAT HE RAN INTO.

Q WHY DO YOU UNDERSTAND HE GOT MAD AND QUIT?

A CLOSE, YOU MEAN?

Q CLOSE.

A HE – BASICALLY, RUTHERFORD LABORATORY TOLD HIM THAT HE HAD TO COME BACK TO HIS JOB THERE, OR HE HAD TO QUIT, AND THEY WOULD GIVE IT TO OTHER YOUNG BRITISH PEOPLE, BECAUSE THEY HAVE THE DEMOGRAPHICS THAT MY GENERATION HAS IN THIS COUNTRY, THEY HAVE NOW FOR THE YOUNG PEOPLE IN ENGLAND. OKAY. SO, THEY TOLD HIM, LOOK, WE NEED THIS JOB, TO HAVE SOMEONE IN IT. WE CAN'T AFFORD TO LET IT SIT HERE AS YOU ARE TRAVELING AROUND ON YOUR HIGHER ENERGY FROM YOUR BIG BUDGET FROM U.T. SO, HE HAD TO MAKE A DECISION ABOUT WHETHER HE WOULD PERMANENTLY QUIT RUTHERFORD LAB OR STAY HERE PERMANENTLY. AND HIS WIFE BECAME VERY ILL, AND PERSONAL – OTHER PERSONAL CONSIDERATIONS FORCED HIM TO LEAN TOWARD RUTHERFORD. AND THEN, HE WAS VERY UNSUCCESSFUL IN HIS EFFORTS TO MAKE RESEARCH CONTRACTS HERE, AS I TOLD YOU. YOU KNOW, I BEAT HIM THREE STRAIGHT TIMES. AND THIS DIDN'T FLATTER HIM WITH THE UNITED STATES.

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[p. 211] AND YOU'LL FIND OUT THAT, YOU KNOW, HE IS SUBSTANTIALLY YOUNGER THAN I AM. HIS NINE-MONTHS SALARY IS FIFTY-SIX THOUSAND DOLLARS, WHEREAS MY NINE-MONTHS SALARY IS THIRTY-NINE. IF YOU LOOK AT THE NUMBER OF PUBLICATIONS I HAVE GOT, THE NUMBER – THE

AMOUNT OF OUTSIDE FUNDING FROM COMPETITIVE OUTSIDE FUNDING AGENCIES I HAVE GOTTEN, THE NUMBER OF INVITED TALKS I HAVE MADE OVER THE SAME PERIOD THAT BURGDOERFER HAS, I'M BEATING HIM IN ALL THOSE CATEGORIES, YET HE GETS TWENTY THOUSAND DOLLARS EVERY NINE MONTHS MORE THAN I DO. WHATEVER IT IS; SIXTEEN, SEVENTEEN THOUSAND DOLLARS EVERY NINE MONTHS MORE THAN I DO.

Q WHAT IS BURGDOERFER; AN EXPERIMENTALIST?

A THEORIST, THEORETIC ATOMIC PHYSICS.

Q THEORETICAL ATOMIC PHYSICS?

A YEAH.

Q HE WORKS WITH SELLIN?

A HE WORKS – WELL, NOW, HE WORKS WITH HIMSELF. HE'S A FULL PROFESSOR, BUT HE CAME IN ON THE SALARY –

Q CAME IN ON YOUR SALARY?

A YEAH. SO, THAT'S JUST AN EXAMPLE. AND YOU CAN JUST TAKE ANY THEORIST ON THAT SALARY PAYROLL, AND YOU LOOK AT THEIR PERFORMANCE CHARACTERISTICS, WHETHER YOU TAKE PUBLICATIONS, CITATIONS, OUTSIDE FUNDING DOLLARS FROM COMPETITIVE AGENCIES, INVITED TALKS, YOU TAKE ANY MEASURE [p. 212] YOU WANT TO OF INTERNATIONAL PROMINENCE AND OF BRINGING MONEY TO THE UNIVERSITY, AND

YOU'LL FIND OUT I'M AT THE BOTTOM IN SALARY PER UNIT IN THE ENTIRE FACULTY.

Q AND YOU SAY THAT'S THE –

A AND THAT IS JUST PLAIN –

Q – AND THAT IS THE PROPER CRITERIA TO USE, AS YOU HAVE ALREADY EXPLAINED IT?

A YES. CALLED JUDGING THE PERFORMANCE OF THE PROFESSOR IN THE UNIVERSITY OF TENNESSEE.

Q SALARY PER PUBLICATION, PER LEVEL OF RESEARCH?

A RESEARCH, PER RESEARCH DOLLAR FROM OUTSIDE FUNDING, FROM COMPETITIVE OUTSIDE FUNDING AGENCIES, SO YOU DON'T GET MESSED UP WITH THESE AGREEMENTS THEY MAKE WITH OAK RIDGE AND THEY TELL THEMSELVES THEY HAVE GOT AN OUTSIDE PROPOSAL, AND THE THING HASN'T EVEN BEEN REVIEWED BY A SINGLE PERSON EXCEPT A FRIEND OUT AT OAK RIDGE.

BUT YOU STICK WITH THE D.O.E. AND THE N.S.F. FUNDING, BECAUSE THOSE THINGS ARE PEER REVIEWED BY THE EXPERTS IN EACH PERSON'S FIELD. AND YOU LOOK AT THOSE TO WHAT SALARY PER FUNDING LEVEL FOR THOSE ITEMS; YOU LOOK AT SALARY PER FUNDING LEVEL FOR INVITED TALKS, AND YOU WILL FIND THAT I AM AT THE BOTTOM OF ALL THAT. AND THE ONLY POSSIBLE REASON FOR THAT IS RACISM, JUST CLEAR RACISM. THE NUMBERS JUST SPEAK OUT SO LOUD IT'S NOT EVEN FUNNY.

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[p. 256] A ANYWAY –

Q YOU HAVE YOUR THINGS, I HAVE MY THINGS.

A OKAY. SO, I JUST READ IT OVER IN THE TOWER. I ASKED THE LADY TO SHOW ME THE SALARIES, AND SHE SHOWED THEM TO ME, AND I JUST READ HIS SALARY. THAT'S ALL.

Q WHAT WAS HIS SALARY?

A IT WAS HIGHER THAN MINE. I THINK HE HAD FORTY THOUSAND DOLLARS BY HIS NAME FOR NINE MONTHS, AND I HAD THIRTY-NINE WHATEVER. HE HAD A FEW HUNDRED DOLLARS MORE THAN I DID. I SAID, IS THIS REALLY TRUE THAT THIS IS HIS NINE-MONTH SALARY? SHE SAID, YES, IT IS. THIS IS THE LADY THAT KEEPS THE BOOK OVER THERE. I HAD A COPY OF THAT SOMEPLACE.

Q IT'S THE INDICATION I HAVE THAT HIS SALARY FOR LAST YEAR WAS –

A HERE, I COPIED – ACCORDING TO WHAT SHE SHOWED ME, I COPIED – THEY MAY HAVE CHANGED IT, BUT I COPIED – WHERE IS HE? I COPIED – IT SHOULD BE JUST RIGHT HERE. HERE HE IS. FORTY THOUSAND DOLLARS. THAT'S WHAT THEY HAD ON THE BOOKS IN THE TOWER IN THE SPRING OF LAST YEAR. THIS WAS – I HAVE IT DATED HERE, I THINK.

Q CAN I SEE WHAT YOU HAVE?

A YES. I JUST COPIED THAT OUT OF THE BOOKS OVER THERE IN THE TOWER. I SAID, ARE YOU SURE THAT IS THE NINE-MONTHS SALARY, AND SHE SAID, YES, IT IS. SO, [p. 257] HE'S THE ONE AT THE TOP.

Q WHAT OFFICE IN THE TOWER DID YOU GO TO?

A I WENT TO – IN THE BOTTOM OF THE – OF THE – SO, THEY CALL IT PAYROLL, I THINK. YOU GO TO THE BOTTOM – YOU GO IN THE ANDY HOLT TOWER, GO DOWN TO THE BOTTOM, AND THERE IS PAYROLL DOWN THERE, AND YOU CAN WALK IN, AND THEY KEEP RECORDS OF THE SALARIES OVER THERE, OKAY. SO, THAT'S WHERE I GOT THOSE NUMBERS FROM. I JUST COPIED THEM. SHE WOULDN'T LET ME MAKE A COPY OF IT. SHE SAID THAT I HAD TO COPY IT, YOU KNOW, I HAD TO COPY IT BECAUSE THE BOSS HAD TOLD HER THAT PEOPLE JUST MAKE DAMAGES TO THE BOOK. THEY ONLY HAVE ONE. IF SHE LETS IT GO SOME PLACE TO A COPY MACHINE, THEY BEND UP THE PAGES AND ALL THAT MESS, AND SHE DOESN'T – SHE CAN'T USE IT ANYWAY. SO, SHE SAID, YOU HAVE TO COPY IT, SO THAT YOU DON'T DAMAGE THE BOOK. BUT THAT'S WHERE – THAT IS WHERE THAT CAME FROM.

Q I WOULD LIKE TO MAKE A COPY OF THAT THE NEXT EXHIBIT.

(WHEREUPON, EXHIBIT NO. 25 WAS MARKED FOR IDENTIFICATION.)

A SO, ANYWAY, THAT'S WHAT THAT STATEMENT WAS BASED ON. AND I CHECKED WITH HER. I SAID, ARE YOU SURE THAT IS THE NINE-MONTHS SALARY? SHE SAID, YES, IT IS. SO, THAT MADE HIM HAVE A HIGHER SALARY THAN I HAVE, AND I'M 39.

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[p. 265] UNIVERSITY OF TENNESSEE; PER INDICES, THAT I SHOULD HAVE A NINE-MONTH SALARY OF SEVENTY-FOUR THOUSAND ONE HUNDRED AND EIGHTY-FOUR DOLLARS AND SIXTY-SEVEN CENTS. THAT'S WHAT I CALCULATE JUST USING THE STATISTICS – THAT'S WHAT I CALCULATE JUST USING THE STATISTICS AND YOU CAN TAKE A LOOK AT IT. I'M TRYING TO BE FAIR TO THEM.

BUT, YOU KNOW, THIS IS JUST SOME KIND OF REASONABLE SALARY THAT I'M WILLING TO SETTLE FOR, YOU KNOW, BECAUSE THIS IS A DISGRACE. MY WHOLE FIELD JUST CAN'T BELIEVE THE UNIVERSITY WOULD HAVE A MAN WITH ALMOST TWO HUNDRED THOUSAND DOLLARS WORTH OF OUTSIDE FUNDING FROM THE D.O.E. AND THE TEXAS NATIONAL LABORATORY RESEARCH COMMISSION IN A ONE-MAN P. I. ACTIVITY. THAT'S THE HIGHEST ONE-MAN P.I. FUNDING LEVEL THAT I THINK EXISTS IN MY ENTIRE FIELD, AND I'M SITTING HERE WITH A SALARY THREE THOUSAND DOLLARS MORE THAN A BEGINNING ASSISTANT PROFESSOR, IF THEY DID PUT THE SCIENCE ALLIANCE IN, AND LESS THAN AN ASSISTANT PROFESSOR, IF THEY DIDN'T; CATEGORICALLY AT THE BOTTOM OF SALARY VERSUS PERFORMANCE ON EVERY POSSIBLE

INDEX, AND YOU CAN COUNT CITATIONS, BECAUSE MY WORK IS BEING REFERENCED EVERY WEEK IN LEP. YOU KNOW, JUST EVERY WEEK I'M GETTING CITATIONS A WEEK IN LEP. THERE IS NOBODY IN OUR DEPARTMENT THAT IS BEING CITED LIKE THAT. I HAVE THE BASIC ANALYSIS CALCULATIONS FOR THE ENTIRE LEP PHYSICS PROGRAM IN GENEVA, SWITZERLAND, FOR GOODNESS SAKES. YOU KNOW? I MEAN, WHAT

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[p. 282] CLASS ASSIGNMENTS OF PEOPLE HAS HE SIMPLY TAKEN SOMEONE OUT OF A CLASS WITHOUT TELLING THEM THAT HE WAS TAKING THEM OUT OF THE CLASS, WHEN THEY – PARTICULARLY WHEN THEY WERE AWAY LIKE I WAS. YOU SEE, I WASN'T EVEN HERE. I WAS IN CALIFORNIA AT THAT TIME. AND IF YOU LOOK AT HIS TRACK RECORD ON THIS KIND OF PERFORMANCE WITH THE OTHER PROFESSORS, ONCE HE SWITCHES THEM, HE GIVES THEM ENOUGH TIME TO PREPARE A DECENT SYLLABUS SO THAT WHEN THE STUDENTS COME THERE ON THE FIRST DAY, THEY DON'T ALREADY GET A NEGATIVE IMPRESSION OF THE COURSE, AND THEY DON'T ALREADY WRITE IN THEIR EVALUATION THAT YOU'RE NOT PREPARED FOR YOUR LECTURE, WHICH IS WHAT THEY WILL DO IF YOU COME IN THERE ON THE FIRST DAY AND YOU DON'T EVEN HAVE YOUR SYLLABUS RIGHT.

BUT THERE I WAS, UP UNTIL ALMOST THE DAY BEFORE I STARTED TEACHING, I DIDN'T KNOW WHAT COURSE I WAS HAVING, AND THIS, HE NEVER

DOES TO ANYONE EXCEPT ME. HE NEVER DID THIS TO ANYONE ELSE EXCEPT ME.

Q IS THIS THE ONLY TIME HE DID IT TO YOU?

A THIS IS THE ONLY TIME HE DID IT TO ME.

Q HAD BARNES TAUGHT THAT COURSE BEFORE?

A NO, BUT BARNES KNEW HE WAS TEACHING, EVEN THOUGH HE DIDN'T TELL ME BECAUSE WE WERE NOT COMMUNICATING. YOU SEE, HE GAVE BARNES, I THINK, THREE MONTHS NOTICE THAT HE WAS GOING TO GIVE HIM THAT COURSE, BECAUSE THOSE SECRETARIES KEPT TELLING ME THAT, AND I [p. 283] DIDN'T BELIEVE THEM. THEY KEPT SAYING THAT WE DON'T BELIEVE YOU ARE TEACHING THAT COURSE. SO, I SAID, WELL, I HAVE TO HEAR THIS FROM BILL BECAUSE I CAN'T GO – YOU KNOW, HE IS SUPPOSED TO TELL US, BILL BUGG.

Q WHY DIDN'T YOU ASK BILL BEFORE –

A I TRIED TO. WE WERE BOTH IN THE DIFFERENT PARTS OF THE WORLD, AS I TRIED TO TELL YOU. SO, I SENT HIM MESSAGES ON THE BIT-NET TELLING HIM TO ASK ME, ASK ME. THIS IS HIS JOB AS THE DEPARTMENT HEAD TO TELL ME IF HE SWITCHES ME OUT OF THE COURSE. OTHERWISE, I ASSUME I'M TEACHING IT. THIS IS THE USUAL WAY THAT WE OPERATE. HE ONLY TELLS THOSE PEOPLE THAT HE'S CHANGING THAT WE ARE CHANGED. SO, SINCE HE DIDN'T SEND ME A MESSAGE, I DIDN'T THINK I WAS CHANGED. THEN, IT TURNED OUT I

WAS CHANGED, WHEN I FINALLY CAUGHT UP WITH HIM A DAY OR SO BEFORE I STARED TEACHING.

Q SO, YOU HAD SOME INDICATION THAT MAYBE THAT CHANGE HAD OCCURRED AND YOU JUST HADN'T HEARD IT FROM BUGG?

A I DIDN'T KNOW IT. I MEAN, THE SECRETARY WAS SAYING SHE WASN'T SURE. SO, THIS WAS RACIAL BECAUSE, I MEAN, HE DOESN'T TREAT OTHER PEOPLE IN THIS WAY.

Q HOW DO YOU KNOW HE DOESN'T?

A WHAT DO YOU MEAN HOW DO I KNOW?

Q HOW DO YOU KNOW THAT HE'S NOT CHANGED

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[p. 292] MAKES ME WORLD RENOWN.

Q THE FACT YOU GET PUBLISHED EVERY –

A I GET A CITATION EVERY WEEK FROM THE CERN EUROPEAN NATIONAL LABORATORY IN WHICH THEY ARE STUDYING THE PROPERTIES OF THE Z-ZERO.

Q WHAT KIND OF PUBLICATION IS CERN PUTTING OUT EVERY WEEK?

A THEY ARE PUTTING OUT PREPRINTS ABOUT THEIR RESEARCH IN THIS Z-ZERO PHYSICS STUDY.

Q HAVE YOU GOT –

A AND I CAN SHOW YOU SOME OF THOSE.

Q CAN YOU PROVIDE THOSE TO MR. BACON SO WE CAN LOOK AT THOSE BEFORE YOU LEAVE TOWN?

A YES, OKAY.

Q OKAY. THANK YOU.

A THIS MAKES ME WORLD RENOWN [sic]. THE FACT THAT I WAS CHOSEN LAST – AT THE LAST BIG MEETING OF THE WORLD'S HIGHER ENERGY PHYSICS COMMUNITY, WHICH IS THE 1991 INTERNATIONAL LEPTON/PHOTON SYMPOSIUM IN GENEVA OF LAST AUGUST, THE FACT THAT I WAS CHOSEN TO PRESENT THE CURRENT THEORETICAL STATUS OF MY AREA OF THEORETICAL CALCULATIONS OUT OF ALL THE THEORISTS IN THE WORLD MEANS THAT I'M WORLD RENOWN. AND I CAN SHOW YOU THE BOOK IN WHICH THIS TALK IS PRINTED. I CAN ALSO LEAVE THAT WITH HIM.

Q WOULD YOU DO THAT, PLEASE?

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[p. 314] THIS KIND OF RACISM WAS LAST YEAR.

Q BUT YOU WOULD ADMIT, THOSE ARE NOT OVERT RACISM. YOU HAVE NO EXPLANATION FOR THOSE THINGS EXCEPT FOR YOUR RACE, RIGHT? NO ONE HAS SAID, WE DESTROYED YOUR RECORDS BECAUSE YOU'RE BLACK?

A YOU SAY, IN YOUR TERMINOLOGY, YOU DON'T CALL IT OVERT. I DO. I THINK THIS IS THE KIND –

Q YOU DO?

A YEAH. I FEEL IT IS OVERT RACISM. AND I FEEL LIKE, FOR EXAMPLE, WHEN THE DEAN WAS HAVING THE AWARD CEREMONY, AND HE SENT OVER AND ASKED FOR THE AWARDS, THAT EVEN THOUGH I HAD WON THIS ONE HUNDRED AND NINE THOUSAND DOLLARS TEXAS NATIONAL RESEARCH LABORATORY COMMISSION AWARD, IT NEVER MADE IT OVER TO HIS OFFICE ON HIS LIST. I FEEL LIKE IT WAS A CASE OF OVERT RACISM. EVERY AWARD BY EVERY PROFESSOR THAT YEAR, EXCEPT THAT ONE, WAS SOMEHOW LISTED IN HIS LIST.

Q WHO WAS SUPPOSED TO SEND IT?

A THE HEAD OF OUR DEPARTMENT, WILLIAM BUGG. NOW, WHEN I COMPLAINED ABOUT IT, THE DEAN, THEN, SENT SOMEBODY OVER TO GET IT. AND SO, IN HIS AMENDED LIST OF AWARDS, HE PUT IT IN THERE. SO, THIS IS THE KIND OF THING THAT I CONSIDERED TO BE AN ACT OF RACISM, THAT I CONSIDERED TO BE OVERT.

Q DID YOU ASK HIM WHY HE DID IT, WHY HE

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Ward
EXHIBIT NO. 28
A. WINGO

Comparisons (Theoretical Physics)

S_9 = Salary (9 mo.)
Age = approximate age relative to B. Ward
R = Rank (F = Full Professor, Assoc. = Associate Professor, Asst. = Assistant Professor of Physics)

	R	Age	S_9	S_9/tot. pub. (1989)	S_9/recent pub. 1985-1989	S_9/talk (invited) 1985-1989	S_9/Conf'ln Research funding dollar 1991
Close	F	3	$82,500	$1,031.25 (80)*	$2,062.50 (40)	$3,928.56	$3.3
Mahan	F	~10	$95,336		2,444.50	6,355.73	
Macek	F	~12	$85,800		5,362.50	85,800.00 (1)	
E.G. Harris	F	~20	$68,409		34,204.50 (2)	68,409.00 (0)	
Burgdoerfer	F	~4	$55,611		1,737.84 (32)	3,972.21 (14)	
Chillers	F	~6	$37,915	$5,416.43 (7)	12,638.33 (3)	37,915 (0)	
Shih	F	~6	$40,475	$1,619.00 (25)	3,113.46 (13)	20,237.5 (2)	
Cawright	Asst.	~13	$40,000				
Ward	F	0	$39,178	$502.28 (78)	1,004.56 (39)	833.57 (47)	$.28

*(includes ~15 tables)

Further Notes: 1. Cawright is a new white Assist. Prof., employed in 1990. Her salary exceeds mine.

2. During 1988, 1989, and 1990, Close and I received the following research funds in head-to-head competition at DoE & TNRLC
   a. 1988. Ward - $22,000, Close $18,000
   b. 1989 Ward - $25,000, Close $22,000
   c. 1990 Ward - $30,000, Close $25,000
   d. 1991 Ward - $34,000, DoE, Close et al. $25,000
   e. 1991 Ward - $109,938, TNRLC, Close et al. - 00, TNRLC
   f. 1992 Ward - $80,000, DoE, Shih - 00, DoE; Close - $15,000, DoE et al.
   g. 1992 Ward - $100,000, TNRLC

3. Recently, W. Sander, a new Full Professor with the record of an asst. Prof. and no previous professorial experience, was hired at $53,000/9 mo. He is ~6 years younger than me.

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Using Close as an example (he works in my general area and applies to the same funding agencies (DoE, NSF, etc.)), we compute

ΔS_{tot} owed us via the following:

$$(82{,}500 - 39{,}178)\left(\tfrac{4}{3}\right)\tfrac{1}{2} \simeq \$28{,}881.33/\text{yr}$$

(9 mo → 12 mo; compromise)

$$\Rightarrow \Delta S_{tot} = 5(28{,}881.33) = \$144{,}406.60.$$

and that our salary should be \$68,059.33/9 mo.

2. Using Buegdoerfer, we add 6%/year to my salary for 4 yrs. (my time in the profession minus his time in the profession)

$\Rightarrow$ my salary should be \$70,020.76/9 mo.

6	32,000
7	33,500
8	34,632
9	36,500
90	39,178
91	39,178

~~26,463.20~~	23,611.00
~~22,211.00~~	25,447.66
~~24,213.60~~	27,852.51
~~24,315.00~~	29,733.59
~~25,484.51~~	30,489.60
	\$137,134.30 for 9 mo. yrs.

$\Rightarrow \Delta S_{tot} = \$182{,}845.80$

3. Use Sander's Salary.

53,000/9 mo., not professorial experience; no outside funding. ~ 8 years in field.

$\rightarrow (1.026)^8\ 53K \Rightarrow \$84{,}473.94$ /9 mo.

f. 1992 Ward – \$80,000, DoE, Shih – 00, DoE
Close – \$15,000, DoE et al.

9, 1992 Ward – \$100,000, TNRLC

3: Recently, W. Sander, a new full Professor with the record of an asst. Prof. and no previous professorial experience, was hired at \$53,000/9 mo. He is ~6 years younger than me.

(3)

84,473.94
39,178.00
45,295.94

45,295.94
43,192.39
~~40,514.39~~
40,549.50
~~36,003.50~~
37,425.94
~~36,293.94~~
34,911.27

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$\Rightarrow \quad \Delta S_{tot} = \$268,500$

$\Rightarrow$ Averaging: 68,059.33
70,020.76
84,473.94
3 | 222,554.03 | 74,184.67 / 9mo

Requested fair salary

and

ΔS_{tot} (owed) = $198,584.10

Punitive Damages 595,752.40

total amount of recovery $794,336.50

A-60

f. 1992 Ward - $80,000, DoE, Shih - 00, DoE
Close - $15,000, DoE et al.

9. 1992 Ward - $100,000, TNRLC

3: Recently, W. Sander, a new Full Professor with the record of an asst. Prof. and no pertinent professional experience, was hired at $53,000/9 mo. He is ~6 years younger than me.

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[p. 22] They list it every time they get a new version of my results from a new conference or whatever. They always list it as a separate entry, and that's true for everybody, not just me.

Q. SPIRES is a computerized program maintained by the library at SLAC; is that correct?

A. And also in Germany in DESY – it's a joint effort between CERN and DESY and SLACK.

Q. Okay. Now, in this June 29, 1993 SPIRES, it shows the number of published papers as 78. Do you see that?

A. Yeah. But that can also be wrong. The point is that in that particular case, first of all, there are papers that have been published that they haven't gotten around to entering into their data base yet.

Q. Do you know how often they enter into their data base?

A. They are entering into it every week, but, unfortuneately [sic], there are about five thousand particle physicists, and each one of us has hundreds of papers and to expect those people to enter and define every publication in every journal – some journals they don't even track.

One of the things you have to [p. 23] watch out for is that there are some journals that even if I do publish it they will never list it as being published there because they don't look at those journals. They just simply don't record information from those journals.

Q. What journals?

A. For example, Computer Physics Communications is not in that listing. So all of my papers in Computer Physics Communcatiōns [sic], which is where I put my Monte Carlo event generator papers that have been the pioneering calculation for the research results from CERN and, also, a lot from SLAC – they are now the basis for my contract with the Texas Commission – I think, probably, none of those are listed in there as published papers even though they are published.

They have some of the most famous papers that have been published in the lab physics program in the last five years. They are not in there because they don't look at Computer Physics Communications. You can't – well, okay. Enough said. There is a disparity between what they claim is published and what is really published. There is no doubt about it.

Q. Nonetheless, you don't disagree

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[p. 59] to every professor throughout America if he has a contract and he is a professor at a university. That is, in fact, one of the roles of a professor in a university.

The fact that a university is giving me the standard treatment as far as administering my contracts does not mean they are supportive of those contracts. They simply are just trying to not get themselves into further legal action by not doing that. You cannot use that as an example.

Q. Do you have any documentary evidence to show that other than what you are talking about with Dr.

Siopsis? What other documentary evidence do you have to show that the university is not supportive of your research?

A. For example, recently, this Texas award, if you look at it, it is $76,500. Last year it was $100,000. That is $23,000 worth taken out, and they were taken out because it was known to them that Dr. Siopsis would become a teaching professor; whereas, before, he had been a research professor.

They told me last August in a special meeting of our contract people that they would like for the dean to pay him for teaching. So, [p. 60] therefore, they were going to try to make some kind of reduction on my award so that the time he spends teaching would not be wasted with research money paying for that, and I agree on that, that you should not have to use research funds to make someone teach.

It is unheard of throughout America that a university would insist that a professor use his research contract to pay another professor for teaching classes at a university.

This is what the dean of the University of Tennessee has recently insisted that I do even though I spent three months now having all of these people talk to him from Texas Commission, from R&D panel – whatever.

I have spent over two or three months trying to explain to him that this is ridiculous to do, and how can he say he is supporting my research if he won't even pay the people in my thing for teaching?

And you have to understand that if Dr. Siopsis was not teaching those classes, he would have to pay somebody to teach them. This is another example of what I am telling you.

Q. Dr. Ward, who at the Texas National Lab did you talk to about the possible

* * *

[p. 239] country.

Q. Dr. Ward, are you aware that for your years of faculty experience, and here I am talking about your years of experience at Purdue and your years of experience here and compared to the years of faculty experience of other faculty members, you fit well within the salary rate, did you know that, at U.T.?

A. No. I don't know that because you are counting as salary – you are throwing out the time – you are not even counting the time I was at SLAC when I was working for Ballam in this argument you are making. You are throwing out the period from 1978 to 1986. You are throwing eight years of my career out.

If you take those eight years and look at the publications that I produced and what those publications have had to do with my research today, it is just ludicrous to tell me I was not doing academic work in those eight years.

Academic experience – in other words, the fallacy of that argument is the following: This summer I am at SLAC. I am paid by University of Tennessee funds. It is not paid by SLAC.

I am doing research in the same

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